

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

Y0999-294 (8728-304)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on January 9, 2006

Signature

Typed or printed name Koon Hon Wong

Application Number

09/387,452

Filed

January 9, 2006

First Named Inventor

Dono

Art Unit

2135

Examiner

P. Klimach

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).


Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record. 48,459
Registration number

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34


Signature
Koon Hon Wong
Typed or printed name
516-692-8888
Telephone number
January 9, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



PRE-APPEAL BRIEF REQUEST FOR REVIEW
(APPLICATION NO. 09/387,452)

The Examiner's rejections of independent claims 1, 11 and 16 contain clear errors.

The independent claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fox (U.S. Patent No. 4,095,739) in view of Wiedemer (U.S. Patent No. 5,047,928), and further in view of Barritz (EP 0 854 421 A1). Reconsideration of the claim rejections is respectfully requested.

The Examiner erroneously interprets the claimed term "CA computer"

The preamble of claims 1, 11 and 16 state "providing *an individual temporary access to a commonly accessible computer processing system (CA computer)*, the CA computer having a plurality of application programs associated therewith." The term "CA computer" is used throughout the claims, yet ignored by the Examiner. A CA computer is defined on page 12, lines 1-3 of the instant specification, which states that a CA computer "refers to a computer used temporarily to access data while away from the primary computer. *The user typically does not have unrestricted access to this computer and does not have full privileges for access to all resources of this computer.*" The "primary computer" is defined on page 11, lines 18-29 of the instant specification as the "user's own computer." None of the cited references, Wiedemer, Fox or Barritz, alone or in any combination, teach a *commonly accessible (CA) computer*, even in its broadest reasonable interpretation.

Wiedemer, as indicated in the Abstract, teaches a "computer software security and billing system is disclosed in which the application program is enciphered in accordance

with an algorithm driven by a numeric key.” The Examiner states in paper no. 20050823 at p. 3 that Wiedemer “is broad enough to teach the software as an operating system. ... The operating system is the foundation on which applications are built. As a result if there is no access to the operating system, there is no access to the computer.” The Examiner erroneously argues that placing the computer software security and billing system of Wiedemer on an operating system effectively teaches “providing an individual temporary access to a commonly accessible computer processing system.”

A computer without an operating system *necessarily* does not function. By the same logic, an operator/owner of a computer with no operating system has absolutely no control of the computer. Here lies a significant flaw with the Examiner’s argument. If a computer does not have an operating system, then the computer necessarily cannot read the “access code” on the storage device, as essentially claimed in claims 1, 11 and 16? Further, if a user has to load an operating system into a computer for use, it would make no sense for the user to voluntarily bill himself/herself for his/her own use of the computer. The user can simply load any operating system which provides himself/herself with full use of the computer system (e.g., Windows XP, Linux).

Further, it should be noted that Wiedemer assumes that a user has *full, unrestricted access* to a computer. Wiedemer at col. 2, lines 36-39 states that “[t]he present invention is summarized in that a billing system for the distribution of personal computer software includes a security module which may be installed *in the personal computer of the user.*” Wiedemer at col. 5, lines 38-39 teaches that a “*diskette 14*” carries the enciphered application program. Logically, a user will be unable to load any software into a computer without full, unrestricted use of the computer.

Fox, as indicated in the Abstract, teaches a "security system in which access at remote locations is limited to personnel inserting in the system a coded data card." The Abstract of Fox further states that "[p]rogramming access to the system for the purpose of altering data in the access authorization table is limited to *individuals who insert a supervisor's card* into the system."

First, there is no indication that the security system of Fox is a computer "having a *plurality of application programs* associated therewith." Second, even assuming, *arguendo*, that such a computer is taught by Fox, Fox does *not* teach that the computer is *commonly accessible*. Indeed, by expressly limiting programming access to individuals with only a supervisor's card, the security system of Fox teaches away from a commonly accessible computer. Logically, a *security* system is necessarily *not commonly accessible*, or else it would be known as an *insecure* system.

Barritz, at col. 2, lines 33-40 states that "it is an object of the present invention to provide a method and apparatus which permits the gathering and recording of license passwords and license information, data and specifications relative to the manner in which an individual has set up and personalized a personal computer, *so that this personalization can be readily transported to, and established on, a different personal computer.*" Barritz is entirely unconcerned with a CA computer. Indeed, Barritz assumes full, unrestricted access to the computer, even expressly statement that the personalization can be established on a different *personal computer*. The use of the term "personal computer" strongly indicates full, unrestricted access.

Examiner failed to show proper motivation to combine the references

The only motivation provided by the Examiner for combining Wiedemer with Fox is the following: “At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to monitor and then billing for the use of applications on a computer as in Wiedemer in the system of Fox. One of ordinary skill in the art would have been motivated to do this because it would provide information as to the resources used by personnel” (Paper no. 20050823, p. 5).

As noted above, Fox is directed to a *security system* limiting access to *personnel*, and in particular, limiting access to programming functions to a *supervisor’s* access. It makes absolutely no sense for the invention of Fox to include the monitoring and billing operations of Wiedemer. The terminals described in Fox provide only limited functionality of a *security system*. The system is intended for personnel only, and not for generic public use. Why would a billing system be part of a supervisor’s access to the programming functions of a security system?

The combination of Fox, Wiedemer and Barritz by the Examiner is a *textbook example* of selectively piecing together parts of a reference using the impermissible benefit of hindsight reasoning. The Examiner’s attempt to combine a billing system as part of a supervisor’s access to a security system extends beyond comprehension and logic.

In view of the foregoing, withdrawal of the rejections of claims 1, 11 and 16 under 35 U.S.C. § 103 is respectfully requested.